

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition of Interstate Power  
and Light Company to Recover the Kansas  
Property Tax on Gas in Storage Through the  
Annual PGA True-up Filing

ISSUE DATE: November 4, 2005

DOCKET NO. G-001/M-05-266

ORDER GRANTING VARIANCE AND  
IMPOSING REQUIREMENTS

**PROCEDURAL HISTORY**

On February 11, 2005, Interstate Power and Light Company (Interstate or the Company) filed a request to recover the property tax on gas stored in Kansas through the annual purchased gas adjustment (PGA) true-up stating that the property tax was a part of the cost of storage. If needed, the Company requested a variance to allow the requested recovery.

On June 13, 2005, the Minnesota Department of Commerce (the Department) filed comments recommending denial of the request because the Kansas property tax is not a direct cost for natural gas delivered. Rather it is a property tax which should be recorded in Federal Energy Regulatory Commission (FERC) Account 408.1.

On June 22, 2005, Interstate filed reply comments reiterating its position that the PGA true-up is the best recovery mechanism. The Company stated that the tax is based on storage and that storage is beneficial to the ratepayers.

On September 2, 2005, the Department filed supplemental comments stating that Interstate has demonstrated that the Kansas tax is a direct volumetric cost of natural gas and recommended granting a one year variance.

On September 9, 2005, Interstate filed supplemental reply comments. The Company agreed with the Department's revised recommendation but wanted it clarified that the variance would apply to the tax assessed as of January 1, 2004, 2005 and 2006.

The Commission met to consider this matter on October 6, 2005.

## **FINDINGS AND CONCLUSIONS**

### **I. Interstate's Request for PGA Rule Variance**

Interstate sought to recover through the purchased gas adjustment (PGA) property taxes on natural gas owned by the Company but stored in Kansas. According to the FERC Uniform System of Accounts, property taxes are to be recorded in Account 408.1 That account is not included among the accounts listed in Minn. Rules, Part 7825.2400, subp. 12, which defines the costs of purchased gas that are allowed to be recovered through the PGA. In order to recover the new Kansas property tax, therefore, the Company requested a variance from the strict definition of "cost of purchased gas" established in Minn. Rules, Part 7825.2400, subp. 12.

Interstate argued that the Commission should grant the variance because the three standards for granting a variance under Minn. Rules, Part 7829.3200 were met in this case: 1) the excessive burden standard; 2) the public interest standard; and 3) the conflict with law standard.

In comments filed September 9, 2005, Interstate agreed with the Department's revised recommendation to grant the variance, along with the four requirements that the Department proposed in its September 2, 2005 Supplemental Comments.

### **II. The Department's Recommendation**

The Department initially recommended that the Commission deny Interstate's request because, in its view, the Company had not met the excessive burden and public interest standards of the Commission's variance rule, Minn. Rules, Part 7829.3200. The Department had made a similar recommendation in a companion docket (Docket No. G-002/M-05-534) regarding Xcel's request for a variance to recover its payments of the Kansas property tax through the PGA.

Following review of Xcel's Reply Comments in Docket No. G-002/M-05-534 however, the Department withdrew its objection to Interstate's request and supported granting Interstate a variance because, it stated, the issues involved in this matter are identical to the issues discussed in Xcel's petition. As in the Xcel docket, the Department stated that it was now convinced that the Kansas property tax in question is a direct volumetric cost of natural gas. The Department stated that it now concluded that Interstate met all the standards of the Commission's variance rule, Minn. Rules, Part 7829.3200.

The Department clarified, however, that the Commission should grant a one-year variance, rather than a permanent variance. The Department stated that due to the uncertain nature of the tax a one-year variance was more appropriate. In addition, the Department recommended four additional reporting, refunding and accounting requirements.

At the hearing, the Department emphasized that argued that the variance should be granted on the policy grounds that, given the volatility of gas prices, gas utility companies should be encouraged to hold purchased gas in storage, as the Company is doing in this case. Denial of the variance

would require the Company to try to recover this expense through base rates set in a future rate case. Granting the variance to allow the Company to recover the property taxes associated with such storage immediately through the PGA would send the proper signal to the Company.

### **III. The Commission's Analysis and Action**

#### **A. Variance**

The Commission finds that the standards for granting a variance under the Commission's variance rule, Minn. Rules, Part 7829.3200, are met in this case and will grant a variance for one year.

First, enforcing the rule as written would impose an excessive burden on Interstates's ratepayers. Given current natural gas market conditions, the Department has advised the Commission that Interstate's ratepayers will benefit from the Company maintaining adequate gas reserves in storage as a hedge against price volatility for the current heating season. Strict enforcement of the definition of "cost of gas" in Minn. Rules, Part 7825.2400, subd. 12 would prevent Interstate from recovering Kansas tax payments on natural gas it holds in storage in Kansas. The Department advised that if the Company is not allowed to recover these tax costs through the PGA it would not maintain an optimum level of natural gas reserves in storage as a hedge against price volatility.

The Commission finds that absent adequate gas storage, ratepayers could experience severely burdensome price fluctuations during the current heating season. The Commission therefore finds that in the unique circumstances of this docket, strict enforcement of the definition of "cost of gas" in Minn. Rules, Part 7825.2400, subd. 12 would impose an excessive burden on the Company's ratepayers. Also, in the event that a challenge to the new property tax is successful, the PGA will allow the immediate discontinuance of collecting that tax and provide an efficient mechanism to track and return tax amounts that have been collected from customers. Absent PGA recovery, return of the amounts collected from ratepayers would be much more cumbersome, delayed, and potentially mismatched.

Second, granting the variance will not adversely affect the public interest. Given the current market volatility, encouraging establishment of reserves via such storage is clearly in the public interest.

Third and finally, granting the variance does not conflict with standards imposed by law. The definition of "cost of gas" is defined solely in a Commission rule (Minn. Rules, Part 7829.2400, subd. 12) and hence is subject to expansion via variance pursuant to Minn. Rules, Part 7825.3200.

#### **B. Length of Variance**

The Commission clarifies that the variance granted in this Order is for one year only. As the Commission's variance rule states:

**Subp. 3. Duration.** Unless the commission orders otherwise, variances

automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

The Commission is not persuaded that circumstances warrant deviating from the one-year expiration date set in the rule.

### **C. Specific Requirements Associated With the Variance**

In its Supplemental Comments filed September 2, 2005, the Department proposed four requirements associated with its recommendation that the Commission grant the Company's requested variance. The proposed requirements were:

1. require the Company to include the Kansas property tax as a separate line item in its monthly PGA;
2. require the Company to submit a report with its Annual Automatic Adjustment report detailing the total amount collected from ratepayers during the gas year;
3. require the Company to file a quarterly report on the status of all administrative and legal activities regarding the Kansas Property tax until such time as all administrative and legal avenues are exhausted; and
4. require the Company to refund immediately pursuant to Minnesota Rule 7825.2700, subp. 8 all charges collected through the PGA in the event the Kansas property tax is overturned.

In comments filed September 12, 2005, Interstate agreed to the four requirements. The Commission finds that these requirements are reasonable and will impose them as recommended.

### **ORDER**

1. The Commission hereby grants Interstate a one year variance to Minn. Rule 7825.2400, subp. 12 to allow the recovery of the January 1, 2004, 2005 and 2006 assessed tax in the PGA.
2. Interstate shall include the Kansas property tax as a separate line item in its monthly PGA.
3. Interstate shall submit a report with its Annual Automatic Adjustment report detailing the total amount collected from ratepayers during the gas year.
4. Interstate shall file a quarterly report on the status of all administrative and legal activities

regarding the Kansas property tax until such time as all administrative and legal avenues are exhausted.

5. If the Kansas property tax is overturned, Interstate shall refund immediately all charges collected through the PGA pursuant to Minnesota Rule 7825.2700, subp. 8.
6. This Order shall become effective immediately.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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